IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1371

UNITED MINE WORKERS OF AMERICA, *et al.*,
Petitioners,

v.

ARMCO STEEL CORPORATION, *et al.*,
Respondents.

UNITED MINE WORKERS OF AMERICA, *et al.*,
Petitioners,

v.

UNITED STATES STEEL CORPORATION,
Respondent.

Brief on Behalf of Armco Steel Corporation, Et Al. In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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No. 74-1574

UNITED MINE WORKERS OF AMERICA, *et al.*,
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UNITED STATES STEEL CORPORATION,
Respondent.

**Brief on Behalf of Armco Steel Corporation, Et Al.
In Opposition to Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit**

Respondents, Armco Steel Corporation, et al., oppose the petition for a writ of certiorari for the reasons set forth herein.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Under the National Bituminous Coal Wage Agreement of 1971, which contains a mandatory arbitration clause, providing that all "disputes" or "differences" arising "as to the meaning and application of the pro-

visions of [the] agreement," or any "differences * * * about matters not specifically mentioned in this agreement," or "any local trouble of any kind aris[ing] at the mine," shall be settled by the arbitration machinery provided by the contract, did a federal court have jurisdiction under Section 301 of the Labor-Management Relations Act of 1947, as amended [29 U.S.C. §185], to enjoin a work stoppage resulting from picketing of the mines of signatory operators by non-employee members of the signatory Union?

STATEMENT OF THE CASE

The respondents, Armco Steel Corporation, et al., are coal mine operators who were signatory to the National Bituminous Coal Wage Agreement of 1971 with the United Mine Workers of America, and whose production and maintenance employees were, and are, represented by the UMWA and its various administrative subdivisions.

In early 1974, the Union, and its various locals and members, engaged in protesting certain state and federal regulations relating to the allocation, distribution and sale of gasoline during the then current gasoline shortage; it being claimed by them that the protested regulations interfered with their convenience in traveling to and from work. In furtherance of that protest, large numbers of coal miners affiliated with various locals of the union engaged in a work stoppage and set up picket lines at the mines operated by the respondents. The object and effect of the work stoppage and picketing was to shut down the mines and the production of coal throughout a major coal producing area so as to exacerbate the energy shortage to coerce the government to

modify the protested regulations. In general, employees from each particular mine did not picket at their own place of employment, but at the mines of other operators in the area. Thus, the pickets at each mine were generally not employees of that particular mine, but employees of other mining companies in the area.

As a result of the picketing, the employees of the respondent operators refused to cross the picket lines and engaged in a general work stoppage which continued for several weeks until an injunction pending appeal was granted by the Circuit Court of Appeals for the Fourth Circuit, effective on March 14, 1974.

The respondents, Armco Steel Corporation, et al., (plaintiffs in the District Court) originally filed a complaint setting forth three counts: one under the Sherman Anti-Trust Act [15 U.S.C. §1, et seq.], a second, under the Emergency Petroleum Allocation Act of 1973 [PL. 93-239] and the Economic Stabilization Act of 1970, as amended [12 U.S.C. §1904], and a third, a pendent jurisdiction common law count for tortious interference with the employer-employment relationship contrary to state law. (Pet. App. A, 2-3)

Filed with the complaint was a motion for a temporary restraining order, which was brought on for hearing. At the hearing, the plaintiffs limited their motion to a request for relief against the local union labor organization defendants, and the individual defendants and the class of pickets which they represent. The District Court granted the plaintiffs' motion for a temporary restraining order against the four individual defendants and the class of pickets, but reserved ruling upon the motion for a temporary restraining order against the local union defendants, pending further

hearing. After limited hearing and argument, the Court ruled that, upon the allegations in the complaint, it was without jurisdiction to act against the labor organization defendants under the Sherman Act; that it was without jurisdiction to act against any of the defendants under the Emergency Petroleum Allocation Act of 1973; and that since it lacked jurisdiction to act against the labor organization defendants under either of the first two counts of the complaint, it lacked pendent jurisdiction of the state law under the third count. Upon that basis, the court denied the motion for a temporary restraining order against the local unions. (Pet. App. B, 11-13)

The District Court, having concluded that it lacked jurisdiction to act against any of the labor organization defendants, then dismissed the complaint as to them, giving the plaintiffs leave to amend. The plaintiffs filed an amended complaint, which was identical to the first complaint, except that there was added a fourth count, which sounded in contract under §301 of the Labor-Management Relations Act of 1947 [29 U.S.C. §185], and requested the same relief, growing out of the same conduct. The plaintiffs again moved for temporary injunctive relief against the local unions. The District Court then ruled that the fourth count of the complaint stated no cause of action; and upon that determination the Court again denied the injunctive relief requested and again dismissed the complaint as to the labor organization defendants only. (Pet. App. B. 11-13)

In a unanimous opinion, the Court of Appeals for the Fourth Circuit reversed. Concluding, on the authority of *Gateway Coal Co.* v. *United Mine Workers,* 414 U.S. 368 (1974), that "an agreement not to strike and not to engage in a work stoppage over any arbitrable issue

may be implied from a mandatory arbitration provision in a labor-management contract," and that, "an implied agreement not to strike is as effective as an express obligation in supporting jurisdiction under *Boys Markets*" [v. *Retail Clerks Union,* 398 U.S. 235 (1970)], the Court held that the dispute as to the right of the members of the Union to refuse to cross the picket lines was an "arbitrable issue" which the parties had agreed to settle by arbitration under the provisions of the Coal Wage Agreement (Pet. App. A, 4-7); and that the work stoppage resulting from the picketing and the refusal of union members to cross the picket lines constituted a breach of the implied "no strike" provisions of the agreement, which the District Court should have enjoined upon the authority of *Boys Markets, supra.* (Pet. App. A, 4-9)

REASONS FOR DENYING THE WRIT

1. THE COURTS OF APPEALS ARE NOT DIVIDED ON THE QUESTION WHETHER THE RIGHT OF UMWA MEMBERS TO CROSS PICKET LINES OF NON-EMPLOYEE MEMBERS IS ARBITRABLE UNDER THE COAL WAGE AGREEMENT.

Petitioners assert that the Courts of Appeals are "sharply divided" on "the issue whether work stoppages resulting from the presence of foreign pickets at the place of employment are enjoinable under this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union.*" They note that, "the Courts of Appeals for the Third, Fourth and Seventh Circuits have held that such work stoppages are enjoinable under *Boys Markets,*" citing *Island Creek Coal Co.* v. *UMWA, et al.,* 507 F.2d 650 (3rd Cir., 1975); the Fourth Circuit's decision in this case; and *Inland Steel Co.* v. *Local Union 1545, UMWA,*

505 F.2d 293 (7th Cir. 1974); but assert that, "the Courts of Appeals for the Second and Fifth Circuits have held to the contrary that such work stoppages do not arise 'over' any underlying work place grievance between the employer and its employees, and therefore are not enjoinable under *Boys Markets,*" citing *Buffalo Forge Co.* v. *United Steelworkers of America,* 89 LRRM 2303 (2d Cir., 1975); (Pet. App. E); and *Amstar Corp.* v. *Amalgamated Meat Cutters & Butcher Workmen,* 468 F.2d 1372 (5th Cir., 1972).

There is, however, no split or division among the circuits with respect to the question whether the right of UMWA members to cross picket lines of non-employee members is arbitrable under the broad arbitration provisions of the National Bituminous Coal Wage Agreement of 1971. In every case in which that issue has been presented the Courts of Appeals have agreed that a refusal to cross a picket line composed of non-employee member of the UMWA gives rise to an arbitrable dispute under the Coal Wage Agreement. *Inland Steel Co.* v. *Local Union 1545, United Mine Workers of America, supra; Armco Steel Corporation* v. *United Mine Workers,* 505 F.2d 1129 (4th Cir., 1974); *Island Creek Coal Co.* v. *United Mine Workers of America, et al., supra.*

The question of what disputes are or are not arbitrable under a particular labor contract depends upon the language of the contract. The fact that courts have ruled, as in *Amstar Corporation, supra,* and *Buffalo Forge, supra,* that a refusal of employees to cross a picket line established by non-employees does not constitute an arbitrable issue under the different arbitration clauses of other contracts does not necessarily create a conflict with the three Circuits that have held that such a refusal creates an arbitrable issue under the Coal Wage Agreement. As this Court recognized in *Gateway Coal Co., supra,* the arbitration provisions of the Coal Wage Agreement are extraordinarily broad, making arbitrable: (1) all disputes respecting the meaning and application of the provisions of the agreement; (2) all differences about matters not specifically mentioned in the agreement; and (3) "any local trouble of any kind arising at the mines." Only disputes "national in character" are excluded. The language encompasses any local or regional cause of a disruption of work or of the employer-employee relationship between the parties. No Circuit Court of Appeals has concluded that a dispute as to the right of UMW members to honor picket lines of non-employee members of the Union is not an arbitrable dispute under the broad arbitration provisions of that Coal Wage Agreement.

2. THE DECISION BELOW IS NOT AT ODDS WITH *BOYS MARKETS, INC.* V. *RETAIL CLERKS UNION*, BUT IS CONSISTENT WITH THE PAST DECISIONS OF THIS COURT AND WITH THE POLICY EXPRESSED IN NATIONAL LABOR LAWS.

Section 203 (d) of the Labor-Management Relations Act of 1947, as amended, [29 U.S.C. §173 (d)] provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agrement." The National Labor policy is to encourage the settlement of labor disputes by peaceful arbitration rather than by work stoppages.

In *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957), this Court recognized that: "The chief advantage

which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement." In *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), and companion cases, this Court held that the national labor policy, as expressed in §301 of the LMRA, favors the settlement of industrial disputes through arbitration, and that the courts are required to broadly interpret the arbitration provisions of labor contracts when determining questions of arbitrability. The Court said:

> "* * * An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.
>
> * * *
>
> "* * * In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad. * * *"

It certainly cannot be said with "positive assurance" that the arbitration clause of the Coal Wage Agreement "is not susceptible of an interpretation" that covers the dispute as to the right of the union and its members to honor non-employee member picket lines. *Warrior & Gulf Navigation Co., supra.* On the contrary, the contract provision expressly making arbitrable "any local trouble of any kind" clearly covers such a dispute. It

would have no meaning or effect unless it serves to make arbitrable a disruption of work resulting from employees' assertion of the right to honor picket lines of non-employee members of the Union. The preceding portions of the same clause specifically make arbitrable any dispute "as to the meaning and application of the provisions of this Agreement," and also any differences "about matters not specifically mentioned in this Agreement." Thus, it is clear that every conceivable dispute or controversy between a signatory operator and *his* employees concerning *their* wages, hours or conditions of employment is covered by those portions of the clause, and the only meaning and effect that can be attributed to the addition of the words or "any local trouble of any kind" is to make arbitrable local disputes and troubles that result from the actions of non-employee members of the Union; e.g. the honoring of so-called "stranger" picket lines.

In *Drake Bakeries* v. *Local 50*, 370 U.S. 254 (1962), the labor contract defined the scope of arbitrability as including "all complaints, disputes or grievances arising between them involving questions of interpretation or application of any clause or matter covered by this contract or any act or conduct or relation between the parties hereto, directly or indirectly." The Court characterized this provision as "broad language indeed," and held that it rendered a dispute as to whether employees' mass absence from work constituted a "strike," and whether such a "strike violated the contract," arbitrable.

The plainly exhaustive effort of the parties to the Coal Wage Agreement to make arbitrable every conceivable cause of controversy that might result in work

disrupting strife forbids an interpretation that the parties did not include non-employee member picketing over controversies extraneous to the wages, hours or conditions of employment of the picketed employer's employees.

Since the Agreement required that the parties resolve the controversy by peaceful arbitration, the Court had authority to enjoin the work stoppage and to require that the issue be settled as the Agreement provides. *Boys Markets* v. *Retail Clerks Union, supra; Gateway Coal Co.* v. *UMWA, supra.*

The decision of the Court of Appeals is consistent with its earlier decisions in *Monongahela Power Co.* v. *IBEW*, 484 F.2d 1209 (4th Cir., 1973); *Pilot Freight Carriers* v. *Teamsters*, 497 F.2d 311 (4th Cir. 1974), cert. denied, 42 L.Ed. 2d 107 (1974); and *Wilmington Shipping Co.* v. *Int'l. Longshoremen's Assn.*, 86 LRRM 2846 (4th Cir., 1974), cert. denied, 419 U.S. 1022 (1974); and with the decisions of other circuits. *Island Creek Coal Co.* v. *UMWA, supra; Inland Steel Co.* v. *Local Union 1545, UMWA, supra.*

3. THE DECISION BELOW IS CONSISTENT WITH DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD AND THE COURTS OF APPEALS CONCERNING WHEN THE HONORING OF A PICKET LINE IS PROTECTED BY THE NATIONAL LABOR RELATIONS ACT.

Petitioners assert that the respondents' employees' "right" to refuse to cross non-employer member picket lines, and thereby to engage in a work stoppage against their employers, is protected by Section 7 of the National Labor Relations Act. It is submitted that petitioners misconceive the scope of the protection afforded by Section 7 and the import of Board and Court of

Appeals decisions dealing with the right of employees to honor "foreign" picket lines.

In *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71 (1953), this Court held that the protection afforded by Section 7 to the honoring of picket lines is waived by the action of employees' bargaining agent in agreeing to a contract "no strike" clause. That principle was recognized by the Fourth Circuit Court of Appeals in *Monongahela Power Co.* v. *IBEW, supra,* wherein the Court said:

> "While there exists a statutory right of employees to refuse to cross a picket line of another union, 29 U.S.C. §158 (b), this right may be waived, and was waived here, by the action of their union in agreeing to a no-strike clause. NLRB v. Rockaway News Supply Co., 345 U.S. 71, 80, 73 S.Ct. 519, 97 L.Ed. 832 (1953)."

The Fourth Circuit's earlier decision in *NLRB* v. *Union Carbide Corp.*, 440 F.2d 54 (4th Cir., 1971), is distinguished from that case, and from this case, by the fact that in *Union Carbide, supra,* the employees who refused to cross the picket line were not covered by a labor contract containing a "no strike" clause.

In the instant case, the respondents' employees who refused to cross the picket lines were subject to the implied "no strike" clause arising from the mandatory arbitration provisions of the Coal Wage Agreement. *Gateway Coal Co.* v. *UMWA, supra; Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95 (1962).

Gary-Hobart Water Corporation, 210 NLRB No. 87, enf'd sub. nom. *Gary-Hobart Water Corp.* v. *NLRB*, 511 F.2d 284 (7th Cir., 1975), is not in conflict with the deci-

sion of the Court below in this case. In *Gary-Hobart*, the Board recognized that the right to honor picket lines may be waived "by appropriate provisions in a collective-bargaining agreement." The Board held, however, that the waiver of the right to strike in that case was limited to arbitrable disputes, and that since the "subject of dispute" there was found to be "not cognizable under the grievance-arbitration procedure," the "no strike clause" did not apply to it.

In enforcing the Board's order, the Seventh Circuit recognized that "the right to engage in a sympathy strike or the right to refuse to cross a picket line may be waived" by "appropriate provisions in the collective bargaining agreement"; but the Court agreed with the Board's conclusion that the language of the arbitration clause there in question indicated "an intention to treat the no-strike clause as having application coextensively with that of the arbitration clause," and that the latter was not sufficiently broad to encompass disputes which did not arise "under or in connection with the terms or provisions" of the bargaining agreement.

The Court expressly distinguished its earlier decision in *Inland Steel Co.* v. *Local 1545, UMWA, supra,* upon the basis of the much more inclusive language of the arbitration clause of the Coal Wage Agreement. The Court said:

> "In Inland Steel Co. v. Local 1545, United Mine Workers of America, 505 F.2d 293 (7th Cir. 1974), we held that the district court could enjoin a sympathy strike or the honoring of a stranger union's picket line where the scope of arbitrable disputes had been fixed by the parties to the collective bargaining agreement, as follows:

> [D]ifferences . . . [1] as to the meaning and application of the provisions of this agreement, or [2] should differences arise about matters not specifically mentioned in this agreement, or [3] should any local trouble of any kind arise at the mine. . .

Id. at 297 n. 5.

The court said of this agreement:

> It is our conclusion that the 'any local trouble of any kind aris[ing] at the mine' language contained in this exceptionally broad arbitration clause is itself expansive enough to cover the present disputes. A work stoppage which results from the honoring of stranger picket lines by company employees is certainly local trouble at the mine. Any other construction of this language would simply be ignoring the realities of the situation. Moreover, these parties agreed to arbitrate not only disputes concerning the meaning and application of the express provisions of the agreement but also disputes 'about matters not specifically mentioned in this agreement.' By the use of this terminology, we conclude that the parties mutually contracted to resolve any labor difficulties arising during the life of the agreement by the arbitration process, other than disputes which are 'national in character.'

Id. at 298.

The court relied upon clauses [2] and [3], *supra,* and in the present case the parties adopted nothing more than clause [1]. Clause [1] seems to us clearly not to affect the right to engage in a sympathy strike. In any event it is not clear and unmistakable language waiving that right."

In the instant case the Union has waived the right to engage in sympathy strikes and to honor non-employee member picket lines by agreeing to resolve "any local trouble of any kind" through the contract arbitration procedures.

4. THIS CASE IS MOOT, AS IT INCLUDES ONLY THE QUESTION OF WHETHER AN INJUNCTION SHOULD BE GRANTED UNDER CIRCUMSTANCES NO LONGER IN EXISTENCE TO ENFORCE A CONTRACT WHICH HAS EXPIRED AND IS NO LONGER IN EFFECT.

The sole question in this case is whether the District Court properly refused to grant an injunction to enforce the implied "no strike" provision of the National Bituminous Coal Wage Agreement of 1971 under the facts alleged in the amended complaint. No question as to the respondent's right to recover damages is presented to this Court or was decided by the Court of Appeals. See footnote 4 of the opinion of the Court of Appeals, Pet. App. 8. That question is clearly moot as (1) the facts alleged in the complaint and upon which injunctive relief was sought no longer exist; and (2) the contract sought to be enforced has terminated by its own terms and has been replaced with a new collective bargaining agreement. Under these circumstances, the respondents neither desire nor deserve any of the injunctive relief prayed for in the complaint, and the petitioners will gain nothing from a ruling by this Court that such relief should not, under the facts and contract before the District Court, be granted them.

Thus, this case is governed by *Oil Workers Union* v. *Missouri*, 361 U.S. 363 (1960). That case squarely holds that this Court will not review a case dealing with the propriety of the granting of an injunction when the facts

giving rise to the application have changed, rendering injunctive relief unavailing to the plaintiff and harmless to the defendants. There, as here, "[a]ny judgment of [this Court] at this late date 'would be wholly uneffectual for want of subject matter upon which to operate." Id. at 371

This judgment appealed from has no collateral effects. Thus, this case is distinguishable from *Division 1287, Motor Coach Employees* v. *Missouri*, 374 U.S. 74 (1963) where the labor dispute continued or *Liner* v. *Jafco, Inc.*, 375 U.S. 301 (1964), where an indemnity bond remained outstanding. Here, there remains nothing of the controversy. Neither side has any real remaining interest in its outcome. The case is classically moot. As such, the petition for certiorari should be denied.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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